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Mass incarceration and ‘public opinion’ on crime and justice: from democratic theory to method and reality

‘public opinion does not exist ... in the form which some people, whose existence depends on this illusion, would have us believe’ (Bourdieu 1979 [1972], 129)

Introduction

This chapter considers the extent to which rethinking ‘public opinion’ can provide support for challenging penal excess and mass incarceration. I assume from the outset that challenging these trends in penal policy is desirable and seek to explore a remedy which has received growing attention in recent years: expanding opportunities for the public to engage in deliberation about the policies which they think should be adopted in response to crime, and favouring the opinions captured via deliberative processes over those captured using more conventional surveys. This chapter considers why this shift is considered desirable and the barriers which must be surmounted if it is to occur.

The chapter is structured as follows. Firstly I explain why the role of ‘public opinion’ in bringing about mass incarceration requires exploration and, in particular, why we should attend to the different ways in which ‘public opinion’ is conceptualised and operationalised. Secondly I identify the influence of democratic theory on the work of those who are concerned with undoing the punitive trend, focusing on the apparent benefits of making greater use of more deliberative practices in consultation and research. Thirdly I consider distinction between deliberation as practice, and as research method. Fourthly I consider the prospects for a ‘deliberative turn’ in criminal justice politics, identifying perceptions of legitimacy as a barrier to increased uptake of deliberative methods. Fifthly I explore a way in which this barrier might be not so much surmounted but, perhaps more realistically, vandalised such that a movement in favour of demolishing the barrier can begin to gain momentum. This, I conclude, is necessary in order to realise the full democratic potential of deliberative practices in consultation and research.

My core argument draws on a range of theoretical resources, but in particular the science and technology studies (STS) literature and specifically the ideas elaborated by Law (2004, 2009). I argue that critics of greater use of deliberation as a method for understanding public opinion premise their arguments on the idea that deliberative methods produce knowledge about an artificially created reality, and that this is a misleading accusation because *all* forms of knowledge production must ‘craft’ the objects they purport to represent, enacting reality as they do so (Law 2004, 54). I suggest that if deliberative approaches to public opinion are to dislodge aggregative approaches from their current position of dominance, and thus dis-incentivise what Green (2014) has termed the ‘penal populism calculus’ then their proponents must try to make space for a ‘politics of the real’. This chapter, therefore, is an attempt to begin to develop a novel and innovative perspective on contemporary penal politics by emphasising the role played by researchers of ‘public opinion’, including academic researchers, in, as Law (2004, 2009) terms it, enacting and re-enacting extant democratic realities.

Mass incarceration, ‘penal populism’ and problems with ‘public opinion’

Leading the world in its use of imprisonment, the United States effectively defines the phenomenon which has been termed ‘mass incarceration’. Yet US ‘mass incarceration’ is perhaps only the most dramatic illustration of a more widespread trend in some countries towards the increased use of both imprisonment and other restrictive and intrusive penal sanctions against those individuals identified as the most suitable targets for regulation through criminalisation (see Garland 1996, 2000, 2001; O’Malley 1999; Ryan 1999; Hallsworth 2000; Rose 2000; Freiberg 2001; Roberts et al. 2003; Hutton 2005; Wacquant 2009; Loader 2011). Whether or not this ought properly to be described as a ‘punitive turn’ is a matter of dispute, with some pointing to the diverse and contradictory nature of developments (e.g. see O’Malley 1999; Garland 1996; Young and Matthews 2003; Tonry 2004; Matthews 2005; Newburn and Reiner 2007)¹, or to an alternate ‘strategic formulation in the penal field’ (Feeley and Simon 1992, 449) which has ‘neither a punitive nor a rehabilitative logic’ (O’Malley 1999, 177). The ultimate rationale behind mass incarceration (if such a thing exists at all)

is not clear cut, then, and may reflect a combination of several different more or less explicit objectives².

Criminologists concerned about the increasingly punitive treatment of offenders often ground their resistance to this trend in the claimed ineffectiveness of increasing the severity of sanctions (e.g. see Garland 1996; Hallsworth 2000; Rose 2000; Roberts et al. 2003; Young 2003). The claim that policy has shifted in a punitive (and therefore, it is implied, ineffective) direction usually rests upon a linked claim that criminologists, as the ‘experts’ on what is effective in dealing with crime, have suffered a loss of status in the criminal justice policymaking process (e.g. see Brereton 1996; Garland 1996, 2000, 2001; Roberts et al. 2003; Young and Matthews 2003; Young 2003; Tonry 2004; Loader 2006, 2011). Criminologists, then, are said to have suffered a loss of status which is all too evident in ‘[g]overnment policies [which] fly directly in the face of research evidence, and would seem to almost wilfully ignore expert opinion’ (Young 2003, 36).

A frequently cited explanation for the alleged shift in policymaker attention away from ‘experts’ and research evidence, is the increasing attention being paid to the expectations, preferences and assessments of ordinary members of the public (Garland 1996, 2000, 2001; Roberts et al. 2003; Young and Matthews 2003; Young 2003; Tonry 2004; Loader 2006, 2011). This trend is said to reflect an increase in the extent to which criminal justice has become an arena for political conflict (Downes and Morgan 1997; Bauman 2000; Roberts et al. 2003; Young 2003; Hutton 2005; Green 2006; Pratt 2007; Newburn and Reiner 2007; Loader 2011; Enns 2014). Some have interpreted the apparently increasing significance of public opinion as indicative of a growing and, at times, potentially positive sensitivity to public preferences on the part of politicians, (e.g. see Downes and Morgan 1997; Ryan 1999, 2003; Matthews 2005). However, others suggest that what politicians have been doing is not *responding* to the views of the public, but rather *exploiting* them by engaging in what has been termed ‘penal populism’ (see Bottoms 1995, 39-40; Roberts et al. 2003; Pratt 2007)³.

The adequacy and utility of the idea of ‘penal populism’ has been disputed (e.g. see Matthews 2005; Tonry 2009) yet, whilst there is likely some truth in the suggestion that the currency of ‘penal

populism' has been over-inflated, this does not mean that we should neglect the importance of 'public opinion' for understanding the development of penal policy and practice. There is ample evidence (as cited above) that over the last four decades political debates about crime and justice have become more prominent and electorally significant in many countries and that, correspondingly, politicians have at least appeared to be paying more attention to various representations of 'public opinion'. Politicians in many societies are now, perhaps more than ever before, keen to ensure that they command the support of the public when it comes to their ability to deal with crime, and in some places at some times this has had a direct impact not just on rhetoric, but also on the policies which have been adopted.

There are, of course, always going to be complex historical, political, cultural and economic factors underpinning public 'sensibilities' towards crime (see Tonry 2001, 2009), as well as the way in which matters of crime and punishment are talked about, in a given society at a given time. Seen against the backdrop of this complexity the idea of 'penal populism' can seem to be rather a blunt tool for analysis. Nonetheless, accounts and examples of 'penal populism' in action point us towards the importance of analysing the texts, devices and political dynamics which texture the relationship between the public, politicians and penal 'experts', and the way in which these help to shape policies and practices. These texts, mechanisms and dynamics include ways of (and representations of ways of) *getting at* 'public opinion', as well as the representations themselves (which is to say the putative 'content' of that opinion).

So how have researchers tended to get at 'public opinion' on crime and criminal justice? Well most frequently investigations focus on generating quantitative data about the proportion of the population who express confidence in, or satisfaction with, the criminal justice system or some part of that system (e.g. the police, judges), or who think that that system should be doing something differently (e.g. sending more people to prison, getting tough with offenders)⁴. Data in this form has been the product of both the kind of opinion polls conducted by commercial polling organizations (which feature frequently in the news media) as well as more substantial, sophisticated and methodologically robust attitude surveys conducted by government departments or academic researchers. Whilst there

are certainly some significant differences between these different kinds of research, they do share the following characteristics: (1) they are based on the *aggregation* of individual views; (2) they are usually (especially in terms of their ‘headline’ questions) focussed on *general* (e.g. the criminal justice system, or ‘sentencing’ or ‘the police’) rather than specific matters (e.g. police or judicial conduct in specific cases); (3) they are premised on a conception of the public as *atomised* individuals who hold (and are entitled to hold) in isolation from others their own ‘personal’ opinions or attitudes; and (4) they (only) permit their participants to express their opinions in the *passive*, non-interactive way which is typical of the survey method. I refer to knowledge about ‘public opinion’ which is produced in this way as Aggregative General Atomised Passive (or AGAP for short⁵).

Knowledge produced through the AGAP approach has dominated political understandings of ‘public opinion’ about crime and criminal justice over the last 30 years, despite a number of identified problems with the approach. Research from the UK and Canada (e.g. see Shaw 1982; Doob and Roberts 1984, 1988; Hough and Moxon 1985; Roberts and Doob, 1989) established that most members of the public were not aware of key ‘facts’ about crime and criminal justice (e.g. crime rates and trends, prison populations and conditions, typical sentencing for key offences). Noting this, researchers developed some alternative, more specific, methods for eliciting public assessments of sentencing. In one often cited study (Doob and Roberts 1984) survey respondents were provided either with the kind of information about specific cases and defendants which had been available to the court, or with the media coverage of the case. Perhaps unsurprisingly, those respondents who received the more detailed information available to the courts evaluated the sentences passed more favourably.

The lesson it was suggested policymakers should draw from the findings on poor levels of public knowledge, and from studies examining differences in sentencing preferences based on providing different levels of information, was that they ‘should not interpret the public’s apparent desire for harsher penalties at face value’ (Doob and Roberts 1984, 277). General measures of public opinion about criminal justice were thus described as capturing ‘false shadows’ rather than ‘true substances’, their alleged methodological shortcomings meaning that they ‘overstated’ public appetites for the

imposition of harsher punishments (Roberts and Doob 1989, 515). Indeed, general questions were described by the UK Home Office's own researchers as 'insufficiently precise to answer whether sentencing is in line with public opinion' (Hough and Moxon 1985, 162, *emphasis added*) and policymakers were enjoined to treat findings about general public opinion with caution (Hough and Mayhew 1985, 43). During the 1980s, then, many researchers examining different facets of 'public opinion' about crime, criminal justice and sentencing regarded the public's general ignorance as undermining the value of AGAP approaches to research in this area. As Hough and Moxon (1985, 162) observed: '[q]uestions designed to find out whether offenders are generally thought to get their just deserts can only be sensibly asked if people hold accurate beliefs about current practice'.

In response some argue that the public ought to be educated about crime and criminal justice so that their 'opinions' (as captured via AGAP-style questions) are more meaningful. But adopting this approach indicates a subtle shift in the way in which AGAP measures of 'public opinion' are regarded. So, when Hough and Roberts (1998, 27) suggest that 'public dissatisfaction [with the UK criminal justice system] stems from public ignorance of the system', they imply (however unintentionally) that rather than being a reason for policymakers to treat general measures of dissatisfaction with care, poor public knowledge should instead be treated as a *causal factor* in public dissatisfaction with sentencing (and thus with unfavourable opinions of the criminal justice system as a whole).

Following the lead of Hough and Roberts, UK Home Office researchers subsequently argued that there was 'increasing awareness of the importance of educating the public about crime and criminal justice' (Mattinson and Mirrlees-Black 2000, 2). There then followed a number of studies which used experimental methods to assess the effectiveness of educational materials at improving (i.e. making more favourable) public assessments of the criminal justice system (see Chapman et al. 2002; Salisbury 2004; Singer and Cooper 2008). In this way, the origins of the inadequacies previously identified with AGAP measures of public opinion were relocated. Instead of lying in the approach to measurement itself, the inadequacies were now found to be in the people subjected to (and by) the

approach to measurement. In other words the problem with AGAP approaches was not created by the researchers who designed them, but by the people upon whom they did their research!

An alternative perspective on the problems with AGAP methods has been articulated by those who have set out proposals to introduce more opportunities for public deliberation about criminal justice issues. These proposals seek to combat the tendency for traditional survey-based methods for gauging public opinion to capture ‘shallow, unconsidered’ responses (Green 2006, 132) (what Fishkin (2009) has called ‘raw’ and ‘debilitated’ opinion) by replacing (or at least supplementing) AGAP surveys with mechanisms which require participants to engage with ‘facts’ and participate in deliberation with fellow citizens (see for example Fishkin 1995; Luskin et al. 2002; Green 2006, 2008; Dzur and Mirchandani 2007; Loader and Sparks 2010; Loader 2011; Dzur 2012). These proposals draw inspiration from the body of democratic theory which has been described as representing a ‘deliberative turn’ (Dryzek 2000, 1).

This body of work is first and foremost a normative theoretical project which, very broadly, reflects the conviction that a vibrant civic culture of informed public dialogue and debate is vital to the health and proper functioning of authentically democratic societies⁶. Deliberative democratic theory theories have informed a range of experiments in institutional design and practical application, from small-scale ‘citizens’ juries’ (e.g. see Munno and Nabatchi 2014), to much larger ‘deliberative poll’ events involving representative samples of the population (e.g. see Luskin et al. 2002). Characteristically these processes involve a group of ‘lay people’ receiving some form of input on ‘the facts’ of the matter for discussion from relevant ‘experts’ in the field, and the engagement by all participants in organised dialogue with one another.

From theory to practice: claimed benefits of a ‘deliberative turn’

Engaging in an appropriately calibrated deliberative process, is claimed to help bring about, and make available for somehow *getting at*, what Yankelovich (1991 cited by Green 2006, 132) calls ‘public *judgment*’ which is ‘the state of highly developed public opinion that exists once people have engaged an issue, considered it from all sides, understood the choices it leads to, and accepted the full

consequences of the choices they make'. The overarching purpose of deploying a deliberative approach, then, appears to be that of assisting participants in moving from expressions of what has been termed 'mere opinion' (Dzur and Mirchandani 2007, 168) towards more 'refined' opinions about the matter at hand (cf. Fishkin 2009). In effect, then, these events and processes attempt to re-engineer the phenomenon we have come to know as 'public opinion' in order to provide more 'defensible' (Green 2008, 242) assessments of what members of the public want the criminal justice system to do. Rather than deflecting blame from researchers, then, proponents of deliberative approaches see approaches to getting at public opinion as a collaborative undertaking: both researchers and those who they research must take some responsibility for producing 'defensible' representations of public opinion.

The enhanced 'defensibility' of public opinion as captured through the deliberative process is often attributed to the space which deliberation creates for citizens to become 'informed' and to engage in 'rational' dialogue. 'Defensibility', then, is associated with making citizens more *expert-like*, taming their supposedly irrational and vengeful tendencies by creating space for the release of 'bees in bonnets' (Yankelovich 1991 cited by Green 2006). Deliberative forums may, it is suggested, provide a means to 'redirect' the intense emotions ignited by crime by 'bringing the emotionally laced experience and demands of citizens in from the shadows ... opening them up to the scrutiny of public, communicative reason' (Loader 2011, 356). In other words the deliberative forum can act as a disciplining influence on raw emotion, by tutoring participants to move beyond the expression of opinions based on fear or anger. However, others have suggested that engagement in deliberation may not merely 'cool down' emotions, but may also utilise the 'heat' that they generate for good: deliberation does not, merely 'inform' participants but also, by engaging them in deliberation with fellow citizens, makes them more aware of the views and life experiences of groups with whom they may not usually come into contact, operating as a 'circulatory system keeping them alive to social reality' (Dzur 2012, 54). This may mean that citizens who participate in deliberation will not only be more 'informed' about 'expert' opinion, but also, potentially, more interested in and, perhaps, more concerned about and sympathetic towards their fellow citizens.

More radical accounts of democratic theory in particular emphasise the affective and transformative aspects of deliberative engagement. A ‘robust’ democracy must have space for much more than the institutionalisation of carefully controlled deliberative for gentlemanly, expert-like discourse which can simply reproduce and legitimise existing inequalities and injustices (Young 2000). Healthy democracies must also accommodate the kind of successful ‘activist communities’ that highlight, expose and challenge unfairness by calling on people to ‘face up’ to injustice (Rowan, 2012). In other words, being a citizen in an *authentically* democratic society comes with responsibilities, as well as rights, and methods for getting at ‘public opinion’ should be calibrated so as to bring these responsibilities to the fore, rather than erasing them (as AGAP approaches tend to do). So participants should come to deliberative processes not only with a view to becoming more informed, but also with a disposition which is ready to respect the political equality of fellow participants, and to listen to their perspectives with an open mind, and a willingness to change – what Young (2000, 25) calls ‘deliberative uptake’. According to this view, then, the whole purpose of the democratic deliberative process is ‘the transformation of private, self-regarding desire into public appeals to justice’ (Ibid, 51). This will take place when participants are required to justify their perspectives and preferences through appeal not to self-interest - which Dryzek (2000) notes is actually a form of coercion - but rather to justice or fairness.

Engaging in respectful, non-self-interested dialogue about important social issues, then, requires participants to think in a ‘public-spirited’ way, and may therefore help to induce a more permanent shift towards ‘public-spirited’ thinking in participants (Ibid, 42). It is not merely, then, that deliberative approaches facilitate the production of more *informed* opinions. It is also that by placing certain requirements and responsibilities on participants – to ‘face up’ to injustice, to respect others, to be willing to change their mind – deliberative approaches are conducive to the development of a more selfless kind of political thinking. This is because when citizens engage in ‘public-spirited’, open-minded dialogue with others, about matters which affect their lives, they must acknowledge both their links to, and their responsibility for, those others (Dzur 2012, 162).

It is, perhaps, this strand of more radical deliberative theory - stressing the affective, transformative and justice-oriented elements of deliberation - that gives proponents of deliberation a particular sense of hope that through deliberative approaches, harsh, punitive penal policy, and mass incarceration, can be effectively challenged⁷. It is the hope and expectation that deliberation will induce a change not just of mind, but also of heart, that seems to underpin at least some of the enthusiasm for deliberative approaches amongst those who regard them as a way to solve the linked problems of 'public opinion', punitive escalation and mass incarceration. Yet, whilst the normative theoretical case for deliberation's value to democracy is rather compelling, and the hopeful accounts of its likely positive effects are seductive, it is necessary for the purposes of this chapter also to consider available evidence on what actually happens when people deliberate about crime and punishment.

Fortunately, the available evidence is promising. A weekend-long 'deliberative poll' conducted in the UK indicates that engagement in deliberation can moderate punitive preferences, at least in the short term (Luskin et al. 2002). Whilst a comparative study of the background political cultures of US states with different rates of incarceration, Barker (2009) argues that higher levels of public participation in political and criminal justice institutions can nurture more moderate, 'less coercive' approaches to penalty. A further study by Green (2008) highlights the relationship between the background political and media conditions and criminal justice approaches and outcomes in two apparently quite similar cases of children killing other children. The indications are clearly there, at both the macro-level examined by comparative studies, and the micro-level of specific deliberative events, that deliberative processes and political cultures tend to support more moderate, less punitive approaches to criminal justice. However, recognising the value of deliberative approaches is one thing; working out how to make their use more common, influential and embedded in societies where they are currently rather marginal, is quite another.

Is deliberation a practice or a method?

It is prudent at this point to examine what distinction (if any) can be made between deliberation as process or *practice* and deliberation as *method*, and to consider which of these is most immediately

relevant when it comes to challenging punitive penal policy and mass incarceration. The term ‘deliberative methods’ has been applied to various approaches to opinion research that attempt to operationalise aspects of deliberative theory by, as a minimum, emphasising the active engagement of research participants in a process of exploring and deliberating together upon ‘the facts’ of the matters on which their opinion is sought (see Evans and Kotchetkova 2009, 627). The distinction between deliberation as practice and deliberation as method may rest upon the reasons (explicit and implicit) why the deliberative process is convened. It may also rest (relatedly) on the status accorded to its outcome or end product (if such product results). However the distinction may also hinge upon what counts as ‘method’: what are its characteristics, and do deliberative processes have them?

First, let’s consider whether we can distinguish between deliberation as practice or method on the basis of the reasons for deliberating and the status of outcomes. A deliberative process can be convened in order to support citizens in making a decision about what is to be done. The most familiar contemporary example is the use of a jury to decide whether an offender is to be found guilty of a crime (and, more rarely, on their sentence). In this case the outcome of the deliberative process is a decision, and its status is legally binding (although potentially subject to appeal). Citizen involvement in the deliberative process is therefore ‘load-bearing’ (Dzur 2012). More recently, some states have (usually at the regional or local level) introduced elements of deliberation to public decision-making processes on more general policy issues, however these have tended to be closely controlled and deliberation is used here in a limited sense as a prelude to a vote open to people who did not necessarily take part in the deliberation⁸. At most the outcome of the deliberation might shape the choices which are subsequently available for citizens to vote on. Much more commonly a deliberative process might be used to allow citizens to be ‘involved’ or ‘participate’ in decision-making without allowing them to actually make the final decision for themselves, in which case the eventual status of the deliberation’s outcome can be unclear, and the way it is used may be more or less obscure. In effect, then, these various forms of public ‘involvement’ or ‘participation’ (so-called) are largely confined to citizens being ‘consulted’⁹, in which case the outcome of any deliberative process would

merely have the status of a statement about what the public believes ought to happen (in other words the end product is knowledge).

So, the term ‘deliberative practice’ can encompass a range of things, from the activities of load-bearing, decision-making forums like juries, to the use of deliberation as a consultation method where deliberation is regarded as a way to *get at* ‘public judgment’ (understood as a more ‘refined’ version of ‘mere opinion’). In the latter case the outcome of both deliberation as ‘consultation’ and deliberation as ‘method’ would appear to be the same: the production of knowledge about what the public believes. However, some social scientists will bridle at this suggestion that *any* attempt to produce knowledge should be regarded as a method. As Law (2004) notes, ‘method talk’, at least in its hegemonic form, places ‘rules’ and ‘rigour’ centre stage: what can count as a ‘method’ is thus bounded by a set of assumptions about reality - implicitly singular, pre-existing and independent - and the best way to apprehend it. In particular, the idea of method requires the active engagement of the researcher(s) in analysis, interpretation and representation. When, as in deliberative processes of consultation, participants are supposed to be empowered to reach a conclusion by themselves, the hegemonic idea of method unravels: ‘[t]he aim is ... not to document or analyse what citizens say but to create a process through which these concerns can be expressed or made visible to others’ (Evans and Kotchetkova 2009, 626). The role of the researcher thus becomes very unclear, placing social science in a potentially perilous position as it loses its capacity to claim any special expertise about the public (Ibid, 640-1).

So, the idea of using deliberative practices as a *method* for producing knowledge appears somewhat problematic for established conceptions of the nature of method and the role of the researcher. But, if we are interested in how to make deliberation more common, influential and embedded we need to consider the status (and possible alternate statuses) of the outcomes (knowledge?) it produces.

Because deliberative processes, be they ‘load-bearing’, consultative or simply knowledge-producing are always used in particular historical, political and cultural contexts. And for all that the proponents of increased deliberation may make strong moral and practical arguments for such a shift; it is the wider social and political context that must play a big part in shaping the extent to which deliberative

processes are seen as legitimate in their different capacities, which is to say as decision-making, decision-shaping or knowledge-producing. In the next part of this chapter I explore one of the key barriers to gaining legitimacy which deliberation faces in particular in respect of its knowledge-producing role.

Legitimate knowledge-production: science or politics?

Bourdieu (1979 [1972], 129) famously argued that ‘public opinion does not exist ... in the form which some people, whose existence depends on this illusion, would have us believe’. Bourdieu’s critique of ‘public opinion’ focused on the failure by researchers working in this area to develop adequate methods for capturing ‘public opinion’ as it *really* is. He argued that it was necessary to distinguish between ‘mobilised opinion’ and ‘inclinations’ (Ibid, 129-30), and that the latter should not be considered to have attained ‘the status of opinion’ (Ibid, 128). For Bourdieu, the measurements provided by opinion polls were ‘artefacts’, capturing opinions from people ‘in a situation which is not the real situation in which opinions are formed’ (Ibid, 128). The crux of his argument was that:

‘the opinion survey treats public opinion like the simple sum of individual opinions, gathered in an isolated situation where the individual furtively expresses an isolated opinion. In real situations, opinions are forces and relations of opinions are conflicts of forces. Taking a position on any particular problem means choosing between real groups...’ (Ibid, 128)

Like the distinction between ‘false shadows’ and ‘true substances’ made by Doob and Roberts (1984), then, Bourdieu’s critique relies on reality as a key reference point: the problem with the kinds of general measures of ‘public opinion’ which he critiques is that they fail to *capture* ‘reality’, and instead *produce* something false or artefactual.

Now this seems a reasonable criticism (although it turns out, as I discuss further below, that the situation is more complex than Bourdieu allows) but it does not necessarily help us advance the cause of deliberative approaches. This is because, as Bourdieu himself later explored (Bourdieu 1984), widespread use of opinion polling has made us accustomed to the idea that ‘public opinion’ simply *is*¹⁰: that it exists prior to the moment when it is captured, and that it can be captured using something like the general opinion poll mechanism. What Bourdieu (Ibid, 415) called the ‘petit-bourgeois

pretension' that individuals carry with them at all times 'personal opinions' on a vast range of issues - 'personal opinions' to which they feel entitled, and which, when aggregated with other personal opinions make up 'public opinion' - is therefore generally regarded not as artifice, or social construction, but as fact. This is the social and political context into which advocates of deliberative practices are attempting to insert, and assert the legitimacy of, an alternative way of *getting at* 'public opinion'.

This is where the importance of recognising the instability of the distinction between deliberation as *practice* and deliberation as method comes in useful. Because the dominant position which the AGAP conception of 'public opinion' holds in the current social and political context simply reinforces the conviction that there *are* 'methods' through which public opinion 'as it is' (i.e. its reality) can be accurately 'mirrored' (cf. Fishkin 2009, 17). This, in turn, allows critics of the use of deliberative practice as 'method' to suggest that what such processes access and represent is something interesting, valuable even, but that it is not 'real', in the same way that opinions elicited through traditional AGAP-style surveys are 'real'. For example, Hough and Park (2002, 182) suggest that a deliberative poll is a 'useful adjunct' to 'the standard representative poll', and Walker and Hough (1988, 14) suggest that deliberative methods which provide survey respondents with specific sentencing scenarios are useful only in so far as they enable researchers 'to assess the "mechanics" of opinion formation'. The stark truth, according to this perspective, is that research which involves providing participants with more information or input than they would access in their normal daily routine is 'to put them in a position in which they will not find themselves in *real life*' (Walker and Hough 1988, 220, *emphasis added*). And if alternate methods are thus cast as accessing some kind of *unreal life*, then, their legitimacy as knowledge-producing mechanisms is clearly undermined.

Rather than resisting this characterisation of their findings as 'artificial' or 'unreal', advocates of deliberative methods appear to accept it. For example, Luskin et al (2002, 458 *emphasis added*) describe the deliberative polls as providing a 'glimpse of a *hypothetical* public'. This phraseology confirms the view that what deliberative approaches represent has been entirely created by the research mechanism, so that the findings emerging from this method are, and must be, as Loader

(2011, 357) notes, ‘produced’. Deliberative poll advocate Fishkin (1995, 162) meanwhile suggests that researchers using deliberative methods attempt to ‘model what the public *would* think, had it a better opportunity to consider the questions at issue’ (Fishkin 1995, 162, *emphasis added*). The clear implication, then, is that citizens cannot, as Green (2006, 145) puts it, ‘achieve public judgment unassisted’. Indeed, citizens require the ‘treatment’ which the deliberative process provides so that their ‘raw’ and ‘debilitated’ ‘actual’ opinion can become ‘refined’ and ‘deliberative’ ‘counterfactual’ opinion (Fishkin 2009). According to these descriptions then, the deliberative poll provides a true representation of a normatively ideal reality which *does not exist outside of the research context*.

The situation confronting us, then, is as follows. Bourdieu’s (1979 [1972]) classic critique of ‘public opinion’ suggests that inadequate opinion poll methods suggest findings which are mere artefacts, as opposed to representations of ‘real situations’. And Doob and Roberts (1984) suggest that general opinion questions capture only ‘false shadows’ of the ‘true substances’ (which are, presumably, ‘really’ there). Meanwhile Walker and Hough (1988) and Hough and Park (2002) suggest that both survey questions which provide specific case details, and studies which engage members of the public in deliberation, can only ever capture opinions which have been produced by the particular approach to research, and therefore cannot capture ‘real life’. Even proponents of deliberative approaches appear to accept that they capture and represent something which does not and cannot ‘really’ exist unless the public are provided with some assistance by the researchers.

The problem here is that whilst each of these perspectives seems to take as a basic point of reference the idea that there is a ‘reality’ of public opinion, which pre-exists and is independent from the mechanisms applied to capture and represent it, each of them also appears to be premised on slightly different understandings of what counts as ‘real’. There is, then, a tension between the general ontological presumption that reality exists, and the specific presumptions made about its characteristics. The notion of the ‘hypothetical public’ which has come to be associated with deliberative approaches, lends additional credence to the idea that public opinion (‘raw’, ‘debilitated’, ‘actual’) *exists*, it is *real*, it can be *measured* and its ‘mechanics’ can be understood. This encourages us to think about the difference between traditional, AGAP surveys of ‘public opinion’ and

deliberative processes as one of existence versus aspiration, of real versus unreal, of objective versus subjective, of science versus politics, of legitimate knowledge-producing mechanism versus illegitimate knowledge-producing mechanism.

The chances of being able to nurture a more deliberative approach to opinion research under these conditions begin to look rather uncertain. For if deliberative approaches should be viewed as premised on ‘normative’, rather than ‘scientific’ aspirations (Hough and Park 2002), then why should we treat their ‘findings’ as knowledge at all? Why should we not go along with Hough and Park (2002, 166, *emphasis in original*) who argue that ‘whatever the *desirability* of having a well-informed and thoughtful public, deliberative polls are irrelevant as politicians need to take account of the reality of public opinion’? Well, one response to this suggestion is to point out that it is defeatist: there *is* evidence that politics *can* be carried on in a different, more deliberative fashion; citizens can be successfully ‘involved’, in a range of different ways, in both ‘load-bearing’ decision-making scenarios (see Dzur 2012), and in deliberative approaches to consultation and research. We can also note that jurisdictions which do more deliberation often have a more moderate kind of penal politics which does tend to result in less punitive outcomes for offenders (Barker 2009). But this line of argument misses the point.

The key barrier to deliberative approaches being perceived as legitimate is not a lack of awareness of the positive impact they can have; rather it is the accusation that the findings they produce offer knowledge about something which is not ‘real’, whereas AGAP approaches can, if properly designed, capture the reality of public opinion, (a reality which populist politicians do so crave to understand). Thus far, proponents of deliberative methods have not found a way to effectively challenge the damage which this accusation does to their cause. Indeed, as noted above, they often admit to the accusation by emphasising the ‘hypothetical’ or ‘produced’ nature of the phenomenon they capture. Surmounting this barrier is necessary (in order from deliberation to gain greater legitimacy), but it requires a change of tack. Proponents of deliberative methods must undermine the very idea that a single reality of ‘public opinion’ exists prior to and independently of the mechanisms used to represent it. They must politicise the ‘real’.

From method to reality: politicising the real

In using a quotation from Bourdieu (1979 [1972]) to start off this chapter I probably signalled that this piece may contain a fairly orthodox critique of ‘public opinion’. However in the final part of the chapter I extend this critique by drawing on the science and technology studies (STS) literature, specifically the ideas elaborated in John Law’s (2004) *After Method: mess in social science research*. But first I want to revisit some of Bourdieu’s claims about the impact of opinion surveys. Bourdieu (1984) argued that individuals in the age of the opinion survey, being repeatedly exposed to representations of ‘public opinion’, develop what he called the ‘opinionated habitus’, a set of dispositions which are compatible with dominant ways of knowing about public opinion and which form part of the structure of our democratic architecture. As Beniger (1992, 217) suggests, the very fact that AGAP-style questions about public opinion are repeatedly asked, and their results repeatedly reported has ‘deeper cognitive effects on how people remember, envision, and think about public opinion and the public that has opinions’.

Developing a more Foucauldian perspective on what opinion research does, Osborne and Rose (1999, 392) have argued that: ‘people *learn* to have opinions; they become “opinioned”...people come to “fit” the demands of the research; they become, so to speak, persons that are by nature “researchable” from that perspective’. It is not, then, merely that people are altered (in unpredictable ways) by their experiences of being the objects of research, and reading about such research carried out on others (which is a somewhat obvious point). It is rather that the research *produces* subjects and objects; it calls upon individuals to constitute themselves as subjects in certain ways, and it fashions them into research objects by categorizing and ordering their subjectivities (those ‘things’, like emotions, cognitions, preferences, evaluations which we consider to be the ‘stuff’ of the subjective). In this way, social scientific research produces ‘reality effects’ whereby ‘the version of the world that could be produced under [their] description...become[s] true’ (Osborne and Rose 1999, 382).

Drawing upon this notion of ‘reality effects’ we might consider, then, that AGAP-style research and analysis on public opinion, *no less than deliberative methods*, creates the ‘public’ whose views it

purports to represent. It creates the public by presenting individual respondents with narrow channels of opportunity for expressing their opinions and by making them accustomed to these methods as the most appropriate way for their views to be captured. Drawing on Law (2004; 2009) we can take this suggestion further arguing that research methods *must* ‘perform’ or ‘enact’ reality. In the case of research on public opinion, surveys perform the theory of the subject upon which they are premised (e.g. the notion of the citizen as individualised consumer), and the aggregative approach to public opinion ‘*enacts a very particular version of the collective ... it performs it as a countable population*’ (Law 2009, 248, *emphasis in original*).

Further to this, opinion research is never *only* research (or method), but also transmits (or attempts to transmit) information to politicians about the preferences of their public (acting as what Dryzek (2000, 51) terms a ‘transmission mechanism’). As such opinion research (whether AGAP-style and survey-based, or deliberative) is a political practice which provides support for particular kinds of democratic principles: ‘Democratic principles come alive (are “lived”) through the medium of formal decisional mechanisms or *devices* which are designed to activate them and come to be justified in terms of them’ (Saward 2003, 166, *emphasis added*). So, AGAP-style research on public opinion enacts a particular democratic reality: producing knowledge which is congruent with the existing ‘voting-centric’ (cf. Dzur and Mirchandani 2007) institutions of liberal democracy. Thus, those social scientists who embrace this project do not provide merely a ‘workable empirical rendering’ (Price and Neijens 1997, 336) of reality; rather they ‘enact’ a reality which is compatible with the institutions and practices of the dominant political regime and with Euro-American ontological assumptions (which is to say, a reality which is ‘out-there’, singular, definite and independent to and pre-existing the methods used to capture it (Law 2004, 24)). Their method (aggregative, general) both reproduces and reinforces the atomised, passive-style of political engagement required of citizens when they vote in elections. The method, then, turns out to be rather congruent with and nourishing for prevailing ontological and political forces in contemporary society.

As AGAP-style research on ‘public opinion’ repeatedly seeks out, orders, categorizes and represents ‘reality’ in certain ways its purveyors are also engaged in containing the possibilities of reality. This is

not simply because they close off or crowd out other possible *interpretations* of an (implicitly) pre-existing reality (see Bauman and May 2001, 176), but rather it is because they conceal (and deny) the fact that their methods are in fact enacting a particular kind of democratic reality, and that other realities are, or at least may be, possible. This denial is achieved by implying that the ‘rules’ of method are imposed upon researchers by a pre-existing, independent, singular reality (Law 2004, 5). Under cover of this ‘ontological illusion’ (cf. Harré 1998, 38) AGAP approaches to researching ‘public opinion’ are all the time enacting and strengthening a particular form of ‘democratic’ project, and are therefore (albeit presumably unintentionally) stifling attempts to articulate and realize a different kind of democratic reality, such as that different reality articulated by proponents of deliberative approaches to democracy. Yet, as Law (2004, 93) has argued: ‘to try to shoehorn non-coherent realities into singularity by insisting on direct representation and Othering whatever does not fit is ... to (try to) enact a particular version of ontological politics’.

Once we explicitly recognise and acknowledge that research works in such a way as to enact reality a space is opened up which Law (2009, 243) calls ‘a politics of the real ... in which we might try to strengthen some realities while weakening others’. This idea that we can ‘politicise’ the real opens up a new (and exciting) space within which social scientists and democratic theorists might collaborate to consider the way in which social science, in providing knowledge for democracy (such as knowledge of ‘public opinion’) contributes to the promotion of ideas about what democracy is and what it might be. It is within this space that we can start to think about the conditions under which deliberative theories, and the methods they have inspired, might help to unravel those forces which have brought about mass incarceration in the USA and an unnecessarily punitive approach to criminal justice in a number of other jurisdictions.

In short, if deliberative methods are to displace the dominant AGAP approach to researching public opinion on matters of crime and criminal justice, and help to undo mass incarceration, then we are going to need ‘a politics of the real’. We are going to need it because it allows us to be more assertive in challenging those who promulgate data produced through the AGAP survey-based method. In particular, proponents of AGAP approaches should be required to acknowledge the contingent

ontological and political premises upon which their method is based, as well as the ontological and political consequences it enacts and re-enacts. In order to begin to dislodge the demand for the product (AGAP knowledge about ‘public opinion’) it will be necessary to directly challenge the supposed ‘unique selling point’ (‘mirror-like access to reality’) promoted by those who supply it.

This approach is compatible with the normative counsel of C. Wright Mills, who argued that social scientists should seek ‘to combat all those forces which are destroying genuine publics and creating a mass society ... to help build and to strengthen self-cultivating publics’ (Mills 2000, 186). And this expansive, open-ended project, rather than the more limited notion of better publicising research evidence or educating citizens, could provide a more ambitious and democratic orientation for the vague and disputed notion of ‘public criminology’. The task of beginning to unpick and facilitate debate about the relationship between research methods and (democratic) realities would, perhaps, be a worthy project for Loader and Sparks’s (2010) ‘democratic underlabourer’ working in the mode of the knowledge ‘diplomat’ (Latour 2002), shuttling between different camps to facilitate critical self-reflection by requiring them to account for how they construct the knowledge to which they lay claim (see Turner (2013) for a fuller discussion).

Conclusion

Advocates of deliberative democracy, and of the approaches to consultation and research which they have inspired, see AGAP approaches to capturing ‘public opinion’ as assuming and assembling an impoverished public sphere, devoid of the lively conversation, exchange and deliberation which, they have suggested, help to make a democratic way of life possible. Instead, impressions of ‘public opinion’ are formed from the aggregated, unreflective and narrowly channelled private preferences which people are permitted to express in response to the AGAP-style survey. Such preferences are treated not as temporary manifestations of opposing sentiments which may necessitate further reflection and willingness to compromise. Rather they are regarded as sacrosanct objects which individuals may legitimately possess, express and, where they are significant in number, expect to be

taken into account. This is detrimental to the cultivation of responsible democratic citizenship, and has, as discussed above, contributed towards the ‘punitive turn’.

Deliberative practices on the other hand (for decision-making, decision-shaping and knowledge-producing) appear highly likely (although by no means guaranteed) to promote shifts in political orientations which could unravel those forces which have combined to underpin the drift towards ‘mass incarceration’. They will do this by making much greater and more meaningful demands upon participants than the mere requirement that they express an instantaneous evaluation or preference which may legitimately (although may not in practice) reflect their own self-interest. Perhaps just as importantly, deliberative engagements will offer their participants an opportunity to reflect upon the different ways in which democracy is and can be ‘enacted’, and the different ways in which the responsibilities of democratic citizenship can be understood. However deliberative practices must overcome a significant challenge if they are to be used more frequently in research and consultation. This challenge is the often-repeated idea that deliberative practices produce and make available for capture something ‘unreal’ (or, if you prefer, ‘hypothetical’) whilst Aggregative General Atomised Passive (AGAP) survey-based methods capture reality. On this basis it is argued that deliberative practices are interesting experiments but will *never* replace the conventional survey. This idea forms a barrier to progress in promoting a more deliberative approach to penal politics.

The ideas which I have elaborated above are an attempt to start to vandalise this barrier. I use the metaphor of vandalism because I am highly aware that dismantling the barrier entirely is not in my - or indeed any one individual researcher’s - gift. None of us alone can take the barrier down, or indeed persuade politicians to give the proponents of deliberative approaches a leg up so that they can climb over it. But one option currently available to us (though I would hesitate to claim that it is the only option) is to find ways to deface or vandalise the barrier to such an extent that no one wants it around any longer and we agree to pull it down. This chapter is a first attempt, but there is much more work to be done. Indeed, as noted above, future work might explore how political and social theorists can work together to consider the relationship between research methods and the enacting and re-enacting of different democratic realities, potentially unpicking and re-bundling the components parts of

research methods and political practices in novel, unexpected ways. The argument offered here may appear, then, to endorse a strongly *anti*-realist perspective in all respects. But I would rather suggest that it advocates for the value of a flexible and optimistic attitude towards the ‘real’ and its possibilities, in particular when it comes to assembling and representing publics in a manner which inevitably presses upon and interferes with our sense of what is politically possible.

But now I return to the specific matter of deliberation as method. This chapter has been underpinned by a belief which deserves and needs to be made more explicit: that the greatest value in so-called deliberative *methods* is not (as their proponents sometimes seem to suggest) that they have the capacity to access a deeper, more ‘real’ or considered ‘truth’ about ‘public opinion’. Rather their key strength is that they *enact the reality* that makes that ‘truth’ (if indeed that is the best word) possible. In so doing, they operate with a much fuller account of the potential and appropriate role of research subjects as political agents, and they recognise that any and all claims to ‘know’ about what citizens think, or want, are also political acts. Deliberative methods therefore offer both a more democratically appealing vision of the social scientific method *and* a more democratically responsible approach to its ontological productivity. And, it is the latter point that, to my mind at least, makes it a matter of democratic urgency to move beyond the idea of the ‘hypothetical public’ and acknowledge how deeply implicated social scientific activity is in the production and maintenance of democratic realities.

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¹ For example, it has been suggested that the descriptor 'punitive' may be being used as shorthand for *any* 'increase in the range and intensity of formal interventions' (Matthews 2005, 179), regardless of the intentions behind the increase.

² Explaining both the existence and the extent of the trend towards the increasing use of imprisonment (and other punitive sanctions) is a complex business and few (if any) attempts to date have managed to deal comprehensively with all relevant factors, or to account for divergences in the use of imprisonment within and between nations which appear to have comparable background conditions (see Barker, 2009 and Tonry, 2009 for further discussion of this issue).

³ One of the most widely cited accounts of the factors shaping penal policy is the 1995 paper by Anthony Bottoms, in which he coined the term 'populist punitiveness', a term which is 'intended to convey the notion of politicians tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance' (Bottoms 1995, 39-40). Roberts et al. (2003, 7) adapted this term and described what they call 'penal populism', a political approach which 'involves the exploitation of misinformed opinion in the pursuit of electoral advantage'. According to Pratt (2007, 15-18) populist politicians explicitly place their trust in the public rather than 'experts', and publicly denigrate expert-produced knowledge forms such as statistics where they appear to conflict with commonsense, or 'what we all know'.

⁴ For example, a review of the UK literature on 'public confidence in the criminal justice system' found that purely quantitative studies dramatically outnumbered qualitative studies (Turner et al. 2007).

⁵ In an earlier publication (Turner 2014) I abbreviated this to Aggregated, General, Individualised, Passive (AGIP).

⁶ Proponents of deliberative theory have been (at least partly) prompted to pursue this theoretical direction by indications that such a culture of public deliberation and debate has been increasingly undermined (e.g. see Habermas 1989).

⁷ For example, this certainly seems to underpin the claims made by Bell (2014) who argues that a form of ‘public criminology’ which embraces ‘genuine *public* participation’ (Ibid, 499), in the form of deliberative engagement, has the potential to create an ‘exit strategy’ from punitiveness. This ‘genuine democratization’ (Ibid, 501), Bell imagines, will involve prisoners themselves in dialogue in order to foster ‘solidarity’ (Ibid, 498) and ensure that the public are ‘intimately acquainted with the prison and those who are confined within its walls’ (Ibid, 500).

⁸ For example the idea of ‘participatory budgeting’, made famous by its use in the Brazilian city of Porto Alegre, has been applied in some local authority areas in England in order to help local people decide how to use small portions of available public funds (Department for Communities and Local Government 2011).

⁹ Arnstein’s (1969) ladder-based typology of citizen participation remains a go-to source for examining the extent to which citizens are *really* empowered by political activities purporting to ‘involve’ them

¹⁰ Beniger (1992) observes that ‘public opinion’ has come to be understood as having the following characteristics: (1) being the aggregate or sum of the views of *individuals* who are all treated as equally well-informed and able to produce an opinion; (2) being potentially unconscious but able to be both measured and manipulated; (3) being held apart from actual political discourse and positions; and (4) being entirely independent of the uses to which it might be put.